

APPEAL NO. 032614  
FILED NOVEMBER 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 11, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) had disability for the period beginning March 3, 2003, and continuing through the date of the CCH, and that the employer did not make a bona fide offer of employment (BFOE) to the claimant. The appellant (carrier) appealed, arguing that the hearing officer erred in his determination because of his mistaken belief that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §129.6 (Rule 129.6) prevented him from finding a BFOE because the treating doctor either submitted a Work Status Report (TWCC-73) showing a total inability to work or has indicated disagreement with another doctor's TWCC-73. The appeal file did not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. Regarding the BFOE issue, Rule 129.6 sets out the requirements for a BFOE. The hearing officer found that the two letters in evidence put forward as BFOEs failed to comply with Rule 129.6 because the employment offers were not based on the claimant's work abilities as determined by the claimant's treating doctor. Rule 129.6(b) provides in relevant part that an employer may offer an employee a modified-duty position which has restricted duties that are within the employee's work abilities as determined by the employee's treating doctor (the rule goes on to provide for an offer of employment based on another doctor's assessment of the employee's work status in the absence of a TWCC-73 from the treating doctor, provided the treating doctor has not indicated disagreement with the restrictions identified by the other doctor). The employer's offer of employment was based on the work restrictions of Dr. T, a carrier-selected required medical examination doctor. It was undisputed that at the time of employer's first offer of employment, the claimant's treating doctor, Dr. H, had the claimant off work completely and that after the claimant's treating doctor received the work restrictions from Dr. T, she released the claimant to return to work with restrictions greater than those imposed or suggested by Dr. T and subsequently took the claimant completely off of work again. The hearing officer did not err in his determination regarding BFOE. We reject the carrier's assertion that the hearing officer improperly applied Rule 129.6. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determination that the employer did not tender a BFOE to the claimant is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 401.011(16) defines “disability” as “the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.” Although there is conflicting evidence on the disability issue, we conclude that the hearing officer’s decision on that issue is supported by the claimant’s testimony and by the reports of the treating doctor. The hearing officer’s disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
701 BRAZOS, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge